26 While the Commission may have the power to modify a rural LATA to include some people who currently reside in adjacent LATAs, it has no authority to waive, or eliminate, the boundary between two rural LATAs so as to create a single "superLATA."

34. NORTHPOINT COMMUNICATIONS INC.

1-2 NorthPoint supports virtually all of the tentative conclusions in the NPRM, as discussed more fully below. The Commission must go further, however, and adopt rules that will prevent ILECs from engaging in "price squeezes" on competitive facilities-based providers. Ameritech agrees with many of NorthPoint's proposals, as set forth in a document attached to both NorthPoint's and Ameritech's comments.

2-3 In its July 23 *ex parte* on the ILECs' Section 706 petitions, NorthPoint proposed 23 "best practices" that would provide CLECs with easier access to the loops and collocation necessary to provide advanced services; most of these are reflected in the NPRM. One of the greatest limitations on CLECs' ability to provide advanced services is the alleged lack of collocation space. The Commission should adopt minimum national standards, based on NorthPoint's "best practices," to accelerate promotion of xDSL services by promoting the most efficient use of collocation space. Further, the Commission should require ILECs to reduce their wholesale charges for collocation and impute to their own services the collocation charges they collect from CLECs.

3-7 The Commission should require the ILECs to permit the collocation of all equipment used for interconnection or access to unbundled network elements -- specifically including, but not limited to, DSLAMs and packet-switching equipment. In addition, the Commission should clarify that CLECs can place remote monitoring equipment and order remote management facilities to the collocation cage. More generally. where the ILEC chooses to establish an advanced services affiliate, the ILEC should be required to allow CLECs to collocate equipment to the same extent as its affiliate. Finally, NorthPoint recognizes the shared interest of CLECs and ILECs in ensuring that all equipment placed in their central offices meets industry safety standards -- such as Level 1 of Bellcore's National Equipment and Building Specifications. NorthPoint submits that ILECs should be prohibited from requiring compliance with NEBS Levels 2 or 3. However, Level 1 compliance should not be mandated nationwide. Where the ILEC uses equipment that does not meet NEBS standards, the CLEC should be allowed to collocate the same equipment. To ensure that this is feasible, ILECs should be required to publish all the equipment they use.

7-15 Cost-effective physical collocation and alternate collocation arrangements are necessary for widespread deployment of DSL service; accordingly, NorthPoint supports the Commission's proposed steps to make more efficient use of collocation space. Specifically, NorthPoint agrees that if one type of collocation is offered by one ILEC, there should be a presumption that it is technically feasible for every other ILEC to offer it. NorthPoint therefore proposes that every ILEC should be required to offer all forms of collocation, including, but not limited to, the shared and cageless versions discussed in the NPRM, and to offer collocation space configured in any arrangement and of any size. In addition, ILECs should be required to remove obsolete equipment and non-critical administrative offices in central offices to increase the amount of space available for collocation, and should be subjected to minimum national standards for space preparation and construction. Further, NorthPoint agrees that ILECs should charge CLECs only for their own share of the cost of conditioning the collocation space, whether or not competing providers are immediately occupying the rest of the space. ILECs also should be required to: (1) provide immediate collocation ordering rights; (2) provide quotes as to collocation availability and price within 10 days, regardless of the number of quotes submitted at any one time; (3) deliver cages in conditioned space within 90 days; (4) provide cages in unconditioned space within 120 days; and (5) after five days, report missed cage construction dates, and pay monetary sanctions or bear other regulatory penalties.

15-16 ILECs should be required to provide detailed floor plans and allow walk-throughs to interested CLECs whenever they contend that space for physical collocation is unavailable. In addition, ILECs should be required to obey the existing anti-warehousing rules, and be prohibited from warehousing unlimited space for potential future needs. Parity demands that first-come, first-served collocation rules apply to all carriers and that all carriers be barred from warehousing.

17-20 National loop standards are necessary to promote deployment of advanced services. First, ILECs should be required to fulfill their existing loop unbundling obligations to provide unbundled xDSL compatible loops. Second, CLECs should be provided non-discriminatory access to loop-conditioned databases and loop interfaces providing loop information. In addition, all market participants should be subject to the same spectrum management requirements. Further, the Commission should adopt minimum national standards to allow CLECs to provide broadband alternatives to end users served by DLCs. Specifically, ILECs should be required to determine whether alternate copper loops are available whenever the customer is served by a DLC or remote switching module, and cut existing customers served over copper loops to the DLC, freeing up the copper loop for xDSL service. NorthPoint supports the FCC's conclusions that CLECs may request any technically feasible method of unbundling the DLC-delivered loop, and that the ILEC should make available to CLECs all types of loops it makes available to its affiliate. Finally, NorthPoint agrees that ILECs must provide sub-loop unbundling and permit CLECs to collocate at remote terminals. If sub-loop unbundling is infeasible or there is no space at the RDT (or the FCC does not mandate sub-loop unbundling), the ILEC should be required to provide a loop of the same quality and functionality at no greater cost.

21-24 NorthPoint supports the FCC's separate affiliate requirements, which would ameliorate many of the concerns that might otherwise exist with respect to the possibility of discrimination and cross-subsidization by the ILEC. As modified below, the plan will ensure parity between the ILEC affiliate and CLECs. Specifically, NorthPoint agrees that: (1) ILECs and their affiliates may not jointly own switching facilities or the land and buildings on which such facilities are located; (2) all transactions between the ILEC and the affiliate must be at arm's length, subject to the affiliate transaction rules, and reduced to writing available for public inspection; (3) the ILEC and its affiliate must maintain separate books, records, and accounts; (4) they must have separate officers, directors, and employees; and (5) affiliates must be prohibited from taking loans that permit creditors to have recourse to the assets of the ILEC in the event of default.

24-25 NorthPoint also supports the Commission's proposed non-discrimination rule, but urges that it be interpreted broadly and in accordance with the guidelines established for Section 272 in the *Non-Accounting Safeguards Order*. Under those rules, adoption of any standard that favors an affiliate and disadvantages a non-affiliate interferes with competition and constitutes a *prima facie* case of unlawful discrimination.

26 NorthPoint agrees that advanced services affiliates must interconnect with ILECs pursuant to tariff or to an interconnection agreement, and that any network elements, facilities, interfaces, and systems provided by the ILEC to the affiliate would have to be made available to the CLEC as well.

27 The FCC must impose appropriate reporting requirements on ILECs and their affiliates. The *Non-Accounting Safeguards Order* was accompanied by an NPRM that focused on reporting requirements and contained a sample report as an appendix. A similar report, adapted to track issues related to advanced services rather than interLATA services, ought to be mandated to permit monitoring of anticompetitive behavior in the provision of advanced services.

28 Any sunset for the proposed separate affiliate rules for advanced services is inconsistent with the Act.

28-29 NorthPoint believes that virtual collocation arrangements currently discriminate against CLECs. Accordingly, they should be permitted to own, install, and maintain their own equipment. In addition, the FCC should clarify that if an ILEC permits its affiliate to collocate in a remote switching center, it must afford the same opportunity to CLECs.

29-30,
32-33 The general policy goal of transfer rules should be to ensure that the separate affiliate has access to everything to which a CLEC has access, but does not have access to

anything to which the CLEC does not. Specifically, transfers from the ILEC to the affiliate of loops, collocation space, CPNI, and customer accounts, would render the affiliate an assign, as would wholesale transfer of facilities used to provide advanced services.

31-32 NorthPoint supports a waiver process whereby ILECs would obtain preapproval to transfer DSLAMs to their advanced services affiliates, but only for equipment purchased prior to the release date of the NPRM.

33 The FCC should clarify that ILECs are required to disclose network information to CLECs at the same time ILECs disclose the information to their affiliates.

34 NorthPoint encourages the Commission to give significant thought to enforcement mechanisms before authorizing deregulated advanced services affiliates. The FCC should look to the *Non-Accounting Safeguards Order* for important rules of enforcement procedure. In particular, the Commission should place the burden of production on the ILEC every time a *prima facie* violation is shown, and use the "rocket docket" to resolve disputes.

35-39 The Commission must encourage pricing equity in order to promote broadband deployment. Since comments were filed on the ILECs' petitions for Section 706 relief, several ILECs have tariffed ADSL service. However, none of these tariffs reflects any of the exorbitant loop and collocation costs necessary to provide xDSL service, which the ILECs impose on CLECs. This has created a "price squeeze," under which ILECs' charges to CLECs for the unbundled network elements necessary to provide competitive DSL service are more than the full retail charge of the ILECs' service. To combat this price squeeze, NorthPoint suggests that the Commission mandate the following four requirements: (1) ILECs providing advanced services on an integrated basis should impute the costs of the monopoly inputs necessary to provide such service; (2) ILECs should be required to file resale tariffs within 30 days or before originating service: (3) ILECs should be required to accept split-off voice traffic from CLECs at the same prices they charge themselves; and (4) the Commission should convene a joint state-federal board to investigate the use of UNE pricing.

39-40 NorthPoint believes that limited interLATA relief for provision of advanced services by the BOCs is appropriate if the BOC can show that it: (1) provides advanced services through a separate affiliate that satisfies the framework adopted by the Commission; (2) complies with all state and federal rules, and all applicable tariffs and interconnection agreements, regarding collocation; and (3) complies with all state and federal rules, and all applicable tariffs and interconnection agreements, regarding the availability of ADSL, HDSL, and ISDN compatible loops. If these conditions are met, the BOC should be permitted to: (1) provide interLATA transport within a state for data services provided to customers with multiple locations within that state; (2)

access an ATM switch within the state; and (3) provide transport from the ATM switch to the nearest NAP outside the LATA in which the switch is located.

35. NORTHERN TELECOM, INC.

2-3 In requiring a separation of advanced service affiliate assets, the FCC should not preclude the use of integrated xDSL solutions such as Nortel's 1 Meg Modem which allows high-speed 1.28 Mbps downstream capability to advanced service users on existing copper local loop.

3-4 The FCC should not limit the type of equipment that may be collocated for advanced services. Collocated equipment to provide advanced services, such as Nortel's DMS and 1 Meg Modem products, provide integrated voice and data capabilities. The FCC should not force carriers to disable the switching capability of the equipment.

4-5 The FCC should not require costly special conditioning or qualification of local loops where xDSL technology such as Nortel's 1 Meg Modem and EtherLoop work well with unconditioned loops, and avoid loop conditioning costs.

5-7 The FCC should initiate a rulemaking to modify its Part 68 customer premises equipment ("CPE") registration rules to encompass xDSL and other advanced service CPE. Establishing emission mask and frequency coordination standards under the Part 68 CPE regime will facilitate the FCC's goal of effective loop spectrum management for advanced services, and avoid potential problems such as "cross-talk". The FCC should establish clear interim waiver standards, pending adoption of final Part 68 loop spectrum management rules, so that manufacturers may deploy new advanced service technology without delay.

36. PAGING NETWORK, INC. ("PAGENET")

6 PageNet urges the Commission to abandon its ILEC advanced services affiliate proposal because it is neither carrier nor technology neutral.

7 Despite setting forth what appears to be a well considered and firm grasp of the task at hand, the Commission put forth a proposal which would anoint the ILECs as the preferred carriers and xDSL as the chosen technology for bringing advanced telecommunications capability to all Americans.

7 Before the Commission proceeds with its ILEC advanced service affiliate proposal, it should demonstrate how that proposal merely *encourages* ILECs to invest even more heavily in xDSL technologies and does not *favor* those carriers and that group of technologies at the expense of others.

8 *Wireless* technology for both mobile and fixed users may be better suited to realizing the Section 706 goal of deploying advanced telecommunications infrastructure to all Americans.

8 There simply is no evidence that the statutory language, congressional intent or basic economics that underpin the procompetitive provisions of the 1996 act apply differently when the telecommunications facilities and services involved are characterized as "advanced."

9 Importantly, it remains to be determined which capabilities are advanced and whether they are being deployed in a timely manner. The Commission concurrently is conducting an NOI for the purpose of exploring these issues. Until that NOI is completed, PageNet believes it is premature for the Commission to propose special action to give ILECs additional encouragement to deploy advanced telecommunications capability. Indeed, the Commission's ILEC advanced service affiliate proposal may not even address fact-specific shortcomings that may become evident – let alone address them in an efficient, nondiscriminatory and technology neutral manner.

9 PageNet submits that extraordinary measures to address advanced telecommunications capability shortcomings most prudently will be taken in the context of fact-specific, case-by-case reviews.

10 Congress established a comprehensive plan and that plan is working. Although the Commission can do much to ensure that the plan works better and more quickly, it should not alter the plan in the manner represented by its ILEC advanced service affiliate proposal.

10 PageNet also urges the Commission to drop its ILEC advanced service affiliate proposal because it threatens to prematurely halt the development and spur the demise of the PSN.

11 The Commission's apparent decision to arrest the development of the PSN cannot stand. The Commission cannot proceed in the manner proposed until it has, in concrete, a plan that will assure no degradation and will assure continued innovation within the ILEC network.

11 It seems that the problems identified by the Commission and its state counterparts cannot be squared with the ILEC advanced affiliate proposal, without incorporating a requirement that an ILEC must duplicate the deployment made by its advanced service affiliate and must continue to offer and support the same unbundled functionalities that were possible prior to the ILEC's establishment of an advanced service affiliate.

12 The scope of the functionalities required mirrors the scope of ILECs' current *de facto* monopolies in that it extends well beyond and is in no way limited to the local loop. Anticipating that this would be the case – and that the transition from a monopoly to a competitive paradigm would require a transition period – Congress did not limited the

application of Section 251(c) to local loops or even the existing network. Rather, the cost-based interconnection and unbundling and avoided-cost resale obligations of Section 251(c) were intended to level all of the advantages associated with the ILECs' ubiquitous presence and century-plus head start in building a network on a going-forward basis, until competition had developed to a point where application of that section no longer was necessary. Congress also intended to assure that the ratepayer who paid for the development of the network, and the research and development that went into network enhancement, for all those years, continues to have the benefit of the bargain.

12-13 Under the bifurcated network structure that would result from the Commission's proposal, there are likely to be many cases – predominantly in high-cost and less affluent areas – where only ILECs have the economies of scale and preexisting network infrastructure to support deployment of certain advanced capabilities that carriers of all kinds, including local competitors, long distance carriers and wireless providers, like PageNet, may or soon will need access to in order to provision their own traditional or advanced services effectively. In these cases, deregulated ILEC affiliates will be left virtually unfettered in their ability to extract monopoly rents from end users and carrier customers. Thus, in those areas that were of the greatest concern to Congress, the Commission's proposal likely will drive up the costs of *all* telecommunications services – traditional and advanced alike. It is difficult to imagine a result more contrary to the goals of the 1996 Act as a whole, and Section 706 in particular.

13 PageNet believes that the Commission should reverse its course and refrain from adopting its ILEC advanced service affiliate proposal because such action profoundly would disserve the Section 706 goal of encouraging the deployment of advanced telecommunications capability to all Americans and would upend the foundational procompetitive provisions of Section 251(c) in the process. PageNet doubts whether Section 251 reasonably can be interpreted in the manner offered by the Commission in support of its creative proposal to free ILECs from – but not forbear from applying – the cost-based interconnection, unbundling and resale provisions of Section 251(c).

14 ILEC affiliates should not be permitted to share or utilize in any way an ILEC's brands, management or employees.

14 ILEC advanced service affiliates should start from scratch with no preexisting or transferr4ed networks or customers. PageNet cannot conceive of any circumstances where forbearance or a *de minimis* exception would be appropriate.

15 The Commission should ensure cost-based access to broadband loop and transport technologies until such time as the markets for those services are sufficiently competitive so that the advantages of incumbency largely have been overcome by market forces. It can accomplish this by making clear that *xDSL-equipped* and other electronically enhanced loops must be unbundled at cost-based rates. The Commission also should make clear that an ILEC's obligation to unbundle transport –

whether dedicated or shared – neither depends upon nor is limited by the type of technology used.

15 The Commission should define additional functionalities offered over common configurations as network elements.

16 PageNet submits that the Commission should establish UNEs that encompass the functionalities offered by dedicated transport and multiplexing, as well as dedicated transport and switching.

37. PAGING AND MESSAGING ALLIANCE OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

2-4 Under the FCC's *Local Competition Order* and the interconnection provisions of the Federal Telecommunications Act, wireless carriers are entitled to reciprocal compensation from the ILEC for ILEC-to-mobile traffic terminated on the wireless carrier's network, and ILECs are prohibited from charging wireless carriers for that portion of the wireless carrier's interconnection facilities used to terminate ILEC-originated traffic. Wireless carriers are concerned that, if the FCC allows ILECs to provide advanced services through a separate affiliate, the ILEC could improperly evade paying a wireless carrier reciprocal compensation for traffic originated by the "advanced services" affiliate terminating on the wireless carrier's network. Such a loophole for ILECs to avoid paying wireless carrier's reciprocal compensation would be contrary to the public interest. The FCC should clarify that the ILEC advanced service affiliate has to pay the wireless carrier reciprocal compensation for advanced services traffic that the ILEC affiliate terminates on wireless carrier networks.

4-6 The FCC should require that an ILEC be in "substantial compliance" with the interconnection and resale obligations of Section 251 as a necessary precondition before it is granted authority to create an affiliate under Section 706 to provide advanced services. Much like the requirement that an ILEC meet the Section 271 "competitive checklist" of interconnection obligations before it is authorized to provide in-region interLATA service, a Section 251 substantial compliance test will require an ILEC to meet its interconnection obligations before it is allowed relief from dominant carrier regulation to provide advanced services through a non-regulated affiliate.

38. PSINET INC.

3 ILECs' view that they ADSL offerings deliver high-speed services to end-users greatly underestimates the value of Internet-based services and the greater potential range of services that ISPs could deliver to end-users via xDSL technology and the ILEC access lines. [Describes PSI capabilities and services.]

4-7 PSINet cannot deliver Internet-based services to a broad range of customers via the ILECs' current ADSL because (a) ADSL is asymmetric, (b) the ILECs' current

ADSL bundles the local loop and ADSL electronics with an ATM or Frame Relay service, (c) the geographic scope of the ILEC offerings impedes the ability of ISPs to offer a variety of services.

8	Commission can effectively further policy mandates by focusing on access to the underlying telecommunications capability and telecommunications services that competing provider uses, including CLECs and ISPs, to offer competitive advanced services. Commission should adopt the proposals of ALTS to improve CLEC collocation arrangements and access to unbundled loops.
9-10	Strongly supports proposals to improve the rights and terms of CLEC access to ILEC loops. Also, CLECs must have objective and reliable information available to evaluate whether a given loop contains impediments to xDSL deployment.
10	Encourages the Commission to adopt flexible national standards for the attachment of electronic equipment at the ILEC central office.
10	Collocation rules should be strengthened to prevent ILECs from imposing undue restrictions on the type of equipment collocated or on the form of collocation that best serves the CLEC's needs.
10	Internet-based advanced services can be promoted directly by providing ISPs with rights to unbundle network elements of the ILECs' local loops. ISPs could then communicate directly with their customers.
11	Urges the Commission to consider the broader issues raised in this docket in conjunction with the pending Computer III FNPRM proceeding. Stronger ONA builds on the Commission's policies for a more vibrant information services and advanced services market.
12	Commission should revamp its ONA rules to provide effective access for ISPs.
13-14	Commission should strongly enforce access rights of competing providers.. Suggests that the Commission should apply its Second R&O accelerated process to CLEC and ISP complaints that raise issues of advanced services deployment and ILEC compliance with access obligations. Burden of production must shift to the ILEC in a complaint proceeding, once the complainant has met the pleading requirements of an initial complaint and has demonstrated a prima facie case against the ILEC.
15	Commission should adopt ILEC performance standards that allow the Commission to monitor the progress of ILEC compliance. Standards should establish benchmarks measuring actual ILEC services demanded and the response times—must be provided on a state-by-state basis.
15	Urges the Commission not to adopt interLATA relief to permit RBOCs to carry aggregated Internet communications across LATA boundaries to Internet NAPs.

Such a relief is not a Section 3(25) LATA "modification." Plain language of Sections 271 and 272 permits RBOC participation in the interLATA markets, including Internet communications, only after the RBOC complies with the Section 271 competitive checklist and Section 272 safeguards.

17 The LATA modifications permitted to date are qualitatively different than the proposal for interLATA service to NAPs. The interLATA-NAP proposal would provide the RBOCs a method of entering the traditional market sphere of interLATA providers contravening the Section 271 restriction.

18 InterLATA NAP proposal will not meet the goal of securing high-speed Internet-based services for end-users. Insertion of RBOCs into the Internet backbone services market is likely to hamper competition.

18-19 Requests to provide raw bandwidth using RBOC interLATA lines reflect a misunderstanding of the common causes of less-than-expected application performance on the Internet. Internet performance problems are best addressed through Internet-specific engineering strategies.

39. PUBLIC UTILITY COMMISSION OF TEXAS

1 Takes no position regarding proposal to allow ILECs to create separate affiliates to provide advanced services.

2 Believes that the advanced services affiliate can act in concert with the ILEC to favor the affiliated information services provider to the disadvantage of other information services providers.

2 ILEC and advanced services affiliate may be governed ultimately by a common board of directors, creating a potential for the ILEC and the advanced services affiliate to be overly supportive of the other's corporate goals and needs. E.g., ILEC may condition xDSL loops and the advanced services affiliate may deploy xDSL network elements (i.e., DSLAMs) primarily in an area of interest to the affiliated information services provider.

3 The potential for the advanced services affiliate to become a dominant player in the market necessitates a need for adequate oversight of transactions between the ILEC and its advanced services affiliate. Therefore, if the Commission concludes that it is in the public interest to allow ILECs to create advanced services affiliate, it must create stringent guidelines, such as rules for information sharing and communication between the ILEC and the advanced services affiliate.

4 Concurs that transfers of local loop and wholesale transfers of facilities used to provide advanced services, wold make the advanced services affiliate an "assign" of the ILEC and subject to 261(c). The separate affiliate must be required to acquire its own facilities to provide advanced services.

4 Transfers of intellectual property and proprietary technology to the advanced service affiliate should make the advanced service affiliate an "assign" of the ILEC.

5 State commission should have an opportunity to review periodic transfers between the ILEC and its advanced services affiliate to ensure that ratepayers are adequately compensated, and to determine whether the regulatory status of the affiliate is affected as a result of the transfer.

5-6 Suggests that targeted actions could be implemented after ILECs have fully complied with Sections 271 and 251 to create incentives or alleviate disincentives for the development and deployment of new and advanced technologies. E.g., in Texas, Project No. 19543 was initiated to, for example, consider policies to ensure that access to ILECs facilities necessary for advanced services is available on an unbundled basis at prices that will provide ILECs with the economic incentive to invest in the deployment of advanced technologies and facilities.

6 Actions such as promoting the development of more efficient procedures like an electronic OSS, supported on a nondiscriminatory basis, may also be worthy of investigation.

7 Believes that its experience with arbitration proceedings and the collaborative process have already begun to address some of the issues related to collocation and loop spectrum management that the FCC discusses. Urges the FCC to allow the states to continue working with CLECs and ILECs to resolve competitive issues.

7 Generally supports FCC's efforts to establish minimum collocation requirements, but suggests that the FCC, instead of voiding existing state collocation agreements, allow the states to revise or adopt additional collocation requirements a their discretion.

8 Concurs with FCC's conclusion that ILECs should not be permitted to impede competing carriers from offering advanced services by imposing unnecessary restrictions on the type of equipment that CLECs may collocate. Recognizes that modern technology has blurred the distinction between switching and multiplexing equipment. PUC allows CLECs to collocate remote switching modules, a type of equipment that handles both switching and transmission functions.

8 Believes that collocation of equipment to provide enhanced services should only be permitted in those situations in which equipment is necessary for interconnection and access to UNEs.

8 Notes that it has determined that, incases where two or more carriers collocate in an ILEC's premises, the decision to cross-connect carriers should not be determined by the ILEC, nor can the ILEC impose any restrictions on collocated carriers for purposes of collocation.

9 Notes that is policy concerning safety requirements for collocated equipment is consistent with the FCC's proposal.

9 Notes that several proceedings are underway in Texas to address alternative collocation arrangement issues.

10 Recognizes that alternative collocation arrangements must adequately address security concerns; has adopted appropriate security arrangements for various types of collocation situations. Given that states have experience in creating appropriate guidelines for security measures, recommends that the FCC allow states to determine the appropriate policy for this issue.

11 Notes that the PUC has established a clear policy concerning the allocation of upfront space preparation charges under which the first collocator is responsible for all costs associated with the preparation of the structures, common areas, and passage ways; thereafter, a prorated share is refunded to the previous collocator(s) as additional entities use the collocation space. Concurs that federal guidelines should not preempt existing standards.

11 PUC has specified intervals for the elapsed time between a CLEC's initial request for collocation and an ILEC's response to the request, including when an ILEC must make available information about collocation space availability and price.

12 PUC has developed physical collocation policies similar to the tentative conclusion of the FCC re: space limitations. Through arbitration proceedings with SWBT, the PUC has developed a policy which allows collocators to tour the ILEC facilities to determine whether there is space for physical collocation. Should the collocator and the ILEC disagree on the issue of space availability, the determination is made by a third-party engineer agreed upon by both parties. The findings of the third-party engineer are binding on both parties and made publicly available by the ILEC to other future collocators upon request. Should the third-party engineer determine that physical collocation is not feasible, future collocators may challenge that determination.

12 Agrees with FCC that the CLECs must have timely and accurate information about the network and associated systems in order to provide advanced services and technologies.

12 Aware that there may be substantial upfront development and setup costs associated with developing an electronic OSS. One possible method of recovering these costs would be to allocate them in a competitively neutral manner since both ILECs and CLECs would benefit from the development of an electronic OSS. Believes that TELRIC is sound, efficient pricing method for the recovery of any recurring costs associated with the operation of an electronic OSS.

14 Believes that it is essential to establish a sound method of spectrum management.

Concerned that pairs of wire in the same binder group within a cable may have adverse effects upon one another if the cable pair assignment for a given spectrum is not well coordinated. Because spectrum management involves information and equipment that are unique to each state, believes that regulation of spectrum management as it relates to unbundled cable facilities should be handled at the state level.

14 Concerned that ILECs may be tempted to offer UNEs in a form tailored to the needs of its affiliate, which may force CLECs to purchase items that they do not need. For this reason, believes that there is a need to promote unbundling at as practical a level as possible—PUC has unbundled loop to the distribution level, and in certain cases, the feeder level.

15 Concurs that the procompetitive provisions of the Act apply equally to advanced services and to circuit-switched voice services.

15 ILECs should not prevent the CLECs from accessing network elements because they provide advanced services like xDSL.

12 To extent that advanced services are provided by an ILEC on an integrated basis, network elements used by the ILEC to provide such services should be unbundled and subject to Section 251(c)(3). If the ILEC provides network elements to an advanced services affiliate, the same elements should be provided to a CLEC on a nondiscriminatory basis.

12 Does not believe that the FCC should impose unbundling requirements specific to the provision of advanced services. Believes that the functionalities that CLECs want to access for the provision of advanced services reside, in part in the network elements already identified by the FCC, i.e., loops, NID, switching, signaling, etc. By keeping the network unbundling requirements at this level, the FCC can maintain technically neutral rules.

12 Believes that states should be allowed to determine additional unbundling requirements based on specific ILEC network architecture.

16 Notes that as technology evolves, separate network functions may be integrated into single components. E.g., equipment that integrates DSLAM and switching functions may make physical unbundling infeasible.

17 Believes that ILECs are obligated to make available to CLECs on an unbundled basis all network elements used to provide advanced services. Believes that unbundling of network elements used to provide advanced services should be done when (a) it is technically feasible, (b) it does not impair the quality of the telecommunications services currently provided by the ILEC, and (c) does not affect the provision of emergency services such as 911.

17 Unbundling of physical components will require analysis of state-specific (and maybe company-specific) facilities and would suffer from using a nationwide "blanket" policy.

17 Agrees that advanced services will be offered predominantly to ordinary residential or business users or to Internet service providers and should be subject to Section 251(c)(4) resale obligations.

18 Generally agrees with FCC that some modification of LATA boundaries may be necessary to provide subscribers in rural areas with some type of access to the Internet that other subscribers throughout the nation enjoy, but disagrees that Section 271(b)(3) may be used for this purpose.

40. QWEST COMMUNICATIONS

8 The Act Recognizes and Makes Available to Competitors the Economies of Scale Inherent in the Ubiquitous ILEC Network.

8 The principles underlying the Act's local-market opening provisions apply just as forcefully to next generation technology as to conventional technology.

10 The Commission's separate affiliate proposal appears to ignore the economic realities that underlie the Act. The Commission's proposal is based on the false premise that CLECs need only have access to ILEC conditioned unbundled loops in order to compete on a broad basis in the provision of advanced services, and that they can easily duplicate the other necessary elements of providing xDSL service. The Commission does not explain why the economics that have characterized the circuit-switched local exchange network would not apply as that network evolves to a broadband, packet network.

15 The Commission assumes that because the ILEC and its competitors both enter the market for advanced, broadband services such as xDSL with no market share, they are on the same footing: that they are all lined up at an imaginary starting line at the same time. But the ILECs will have volumes that competitors cannot match. Under the FCC's proposal, they can market advanced services to their existing local exchange customer base without switching their customers' local service provider (the ILEC).

17 US West believes it is hard to justify investing in adding xDSL for each central office serving area, even though it does not need to collocate and is not restricted in the use of collocated switching equipment, has an interoffice transport network already in place and has the entire local customer base over which to spread the cost of that technology. One need only imagine how difficult it would be for each of US West's competitors to justify that investment.

17-18 The FCC's underlying assumption – that every potential competitor can be facilities-based -- is also false, and contrary to the Congressional recognition that competitors should be free to enter the local market whether or not they own facilities. The Commission's proposed approach would create a high entry barrier for advanced services, leaving the market highly concentrated at best.

18 No significant carriers' carrier has yet emerged in the local market to date, despite the obvious need for such a carrier.

19 The Commission should not adopt a proposal that will have the effect of denying to competitors the ability to provide competing service without owning – and collocating in every central office – the facilities necessary to provide that service.

19 The Commission makes another fundamental false assumption in the NPRM: That allowing the ILECs to provide xDSL without permitting access to that capability by competitors will somehow accelerate the rate of ILEC investment. There is no evidence to support this claim.

20 The ILECs do not need relief from regulatory requirements to create incentives for such investments. The real problem is ensuring that when ILECs meet market requirements, they do not charge supra-competitive prices and block competition. This market power generally leads to lower output, not higher.

21 If the Commission were to sacrifice competition in the name of a faster rollout of advanced services, it could have much greater impact on consumer choice than the current lack of competition in conventional local exchange service has had. In the future, broadband packet networks are likely to carry all communications, whether voice, data, images,, or video.

21 As more and more consumers get their information from the Internet, and as industry is increasingly dependent on the Internet to communicate (through e-mail and websites, for example) and to do business, the stakes are much higher if the last mile is not open to competitors.

22 To be successful against a full-service ILEC package, competitors will have to put together packages of services as well if they are to compete with the ILEC. This must include the broadband last-mile connectivity.

22 The Commission is wrong in its view that as long as an affiliate is sufficiently separate from the ILEC, it may own local network facilities or equipment yet not be subject to Section 251(c) obligations.

22-23 In the Non-Accounting Safeguards Order, the Commission held that if an ILEC transfers to its 272 affiliate the "ownership of any network elements that must be provided on an unbundled basis under Section 251(c)(3)," that affiliate is an ILEC too under Section 251(h), because it is an "assign" of the ILEC. Yet, inexplicably, the Commission in the NPRM proposes to permit an ILEC to shelter its investments in advanced local network improvements from competitors through the establishment of a Section 272-type affiliate.

24 Nothing in Section 251(h) would suggest a different result if the facilities and equipment underlying the network elements is purchased directly by the affiliate, rather than transferred to the affiliate.

24-25 The Commission's proposed distinction is equivalent to a determination that any new investment by an ILEC is free and clear of the Act's market-opening provisions, so long as that investment is made in the name of the affiliate. Yet such an outcome runs completely counter to the FCC's own conclusion that the Act does not distinguish between old and new investment: all such investment is covered by Section 251(c)'s market opening provisions because all such investment is part of the incumbent local exchange carrier's network. Such an outcome also runs afoul of the Commission's statement that it is not proposing to forbear from applying Section 251(c) to advanced ILEC telecommunications investment or services. The practical effect of the FCC's action is to forbear from regulating any ILEC investment that is made through its separate affiliate.

25, n.38 If a line is to be drawn under Section 251(h), then it should be drawn between ILEC network facilities, equipment, and capabilities on the one hand, and retail services on the other. . . . The Commission cold reasonably conclude, however, that when an ILEC affiliate is offering local exchange service solely by using an ILEC's network elements or reselling its services, the affiliate is not necessarily an "assign" of the ILEC insofar as it is offering retail services using the ILEC's network elements, *but only if* the retail affiliate is sufficiently separated from the ILEC to enable the Commission to conclude that it is not an ILEC within the meaning of Section 251(h).

26 There is nothing in the Commission's logic, moreover, that would limit the affiliate's unregulated status to advanced services. The Commission's proposed interpretation of Section 251(h) would create a giant loophole in the Act for all local network investment, not just for investment used to provide advanced services.

26-27 It should be clear that over time, under the Commission's interpretation of the Act, the ILEC network would migrate to the unregulated affiliate, and the network element provisions that are so central to local competition would, in time, become an empty vessel for all practical purposes. In effect, the FCC will have forborne from regulation of the ILEC network in any meaningful way – without ever having required the ILEC to "fully implement" Section 251 and without ever having conducted the three-part forbearance analysis required under Section 10.

28, n.40 *Any* affiliate of an ILEC that provides telephone exchange service is an ILEC under the Act. . . . Qwest strongly disagrees that a Section 272 affiliate would satisfy this Section 251(h) test.

30 Section 272 is designed to provide certain safeguards for BOC provision of interLATA services after the BOC has fully satisfied the competitive checklist and

the other requirements of Section 271. It was not designed to guard against the problems that Section 251(h) was designed to guard against, i.e., when an ILEC transfers its local exchange functions to another company in an attempt to avoid its Section 251(c) market-opening obligations.

32 Volume discounts and other preferential arrangements that appear to be available to all competitors, but which suit the requirements and characteristics of the affiliate only, also could be present serious discrimination problems.

34 Because the prices paid by the affiliate are not real, the affiliate can resell the service at a retail price much lower than the most efficient CLEC competitor. The affiliate need not reflect these inputs accurately in its prices because they are not real input costs from the affiliate's point of view – rather, they are paper prices, with the money moving from one pocket (the affiliate's) to the other pocket (the ILEC's) of the same parent company. There is no requirement that the ILEC affiliate make money.

36 Nondominant regulatory treatment of the affiliate would be contrary to the public interest and could raise serious competitive and discrimination issues.... The reality is that the affiliate can work closely with the ILEC and that review of its tariff filings could reveal cross-subsidy, cost-shifting, and anticompetitive and predatory pricing.

37 The FCC's logic would allow an ILEC to selectively shift its local exchange customer base to the affiliate, leaving only the low-revenue customers in the ILEC. Competitors will be left with useless resale and without the UNEs necessary to compete in provision of advanced services on a broad basis. Because of the basic economics of deployment of advanced local network facilities, the FCC" proposed approach also would doubtless shortchange smaller business, residential, and rural customers, leaving them with no choice of broadband service provider.

38 If Qwest were forced to choose between wholesale deregulation of ILEC investment in advanced technology (the Commission's proposal) and the integrated provision of advanced services by the ILEC, it would choose the latter, because at least then competitors would have access to the ILEC advanced local network capabilities.

40 The separate affiliate should not be allowed to own any local network facilities, equipment, or capabilities. These must remain with the ILEC and remain fully subject to the market-opening provisions of Section 251(c).

42 The Commission should prohibit the ILEC and the affiliate from engaging in any joint marketing, sale, advertising, or offering of services. For example, the ILECs should not be allowed to include services provided by the affiliate in the same service package (and vice versa), nor could they bundle-price the offerings (i.e., offer a lower price on the ILEC's service if a customer purchases services from the affiliate). They also should not be allowed to create service offerings together, advertise their services together, or transfer customers to the other company for sale of the other company's services. They must not use each other's customer proprietary network information (CPNI) for any purpose.

43	No Resale of ILEC's Local Exchange Service By Affiliate.
44	If the affiliate is partially publicly owned, there is a stronger argument that it is not the same company as the ILEC and therefore is not the "successor or assign" of the ILEC.
45	The joint ownership of equipment (including such equipment as repair trucks, computer systems), buildings, and administrative services provide ample opportunity for cost-shifting and joint activity.
45	No Sharing of Corporate and Brand Names.
46	The Commission should require that the agreements be available to any CLEC on a section-by-section basis, with the key terms available regardless of surrounding material. The Commission should also look carefully at non-cost-based volume discounts, which could be used to favor the affiliate.
47	Before authorizing the affiliate to operate on an unregulated basis, the Commission must require the affiliate to file a compliance plan, which the Commission must put out for public comment and affirmatively approve.
48	Whether network investment is transferred to the affiliate or made directly by the affiliate, that investment should be subject to Section 251(c), because in either case the ILEC affiliate is an ILEC within the meaning of Section 251(h). Qwest submits that this principle is central to the Act and not subject to debate. It goes without saying, then that any network investment transferred to the affiliate must continue to be subject to Section 251(c).
48-49	There is no statutory basis for treating loops differently from any other facilities necessary to provide competing local service (including advanced services), and the Commission offered none.
49	There also is no statutory or policy basis for a "*de minimis*" exception to the rule that transferred facilities are subject to Section 251(c).
50	The Commission appears to propose to permit the transfer of any xDSL investment (but not loops) without imposing Section 251(c) obligations on that investment. But the statute, does not distinguish advanced services (as the FCC recognized in the Advanced Services Order), any special protection for loops, or anything other types of network facilities or capabilities.
50	Drawing any such lines would untenable as a practical matter, anyway, because for any particular loop, some equipment might be newly installed and some old.
51	State commissions should have the ability to establish further requirements, to the extent that they are no inconsistent with the national minimum standards, in the context of State arbitration proceedings or rulemakings.

51-52 National rules will help speed deployment of advanced services and lower costs to consumers by: 1) providing certainty for ILEC investment in network maintenance and upgrades; 2) allowing competitors providing service in more than one State to offer their products and services to consumers more rapidly; 3) providing greater predictability for equipment manufacturers, thereby allowing increased economies of scale for both ILECs and competitors; and 4) reducing transaction costs and delays by eliminating extensive negotiation and litigation over collocation rights and local loop requirements.

52 The interconnection obligations of an ILEC under Section 251(c)(6) include the obligation to allow collocation of equipment used for "interconnection for 'the transmission and *routing* of telephone exchange service and exchange access' pursuant to Section 251(c)(2)."

53 Given the ever decreasing size of modern switching equipment and the unfair competitive advantage ILECs have by being able to collocate their own switching equipment, the Commission should revisit its previous determinations in light of the plain statutory language and clearly establish by rule that competing carriers may physically collocate on ILEC premises equipment with switching capabilities.

53 The Commission's rule permitting collocation of switching equipment could include reasonable limitations on the size of such equipment, for example to no larger than the 100 square foot cages that many RBOCs advocate as the *minimum* size area that a competing carrier must rent for collocation, in order to reduce space exhaustion problems.

54 Allowing competitors to use integrated equipment that performs multiple functions will promote efficient network design, reduce costs to consumers, and place the competing carrier in the same position as the ILEC (who is under no constraints on the use of equipment that performs multiple functions).

55 ILECs should not be able to require that collocated equipment meet anything more than NEBS requirements for fire, electrical, signal interference, and earthquake safety. . . . Further, to the extent that an ILEC uses equipment that does not meet NEBS standards, competing carriers should be permitted to use the same or similar equipment without meeting those standards.

55-56 Qwest strongly supports the Commission's tentative conclusion that ILECs should be required to offer alternative collocation arrangements that minimize the space needed by each provider.

56 All of the alternatives suggested by the Commission are technically feasible, and the Commission should include in the rule a presumption that any arrangement offered by one ILEC is technically feasible for use at any other ILEC facility.

57 Qwest supports the ALTS proposal that the Commission should establish a presumption that any necessary preparation of collocation space by the ILEC should be able to be completed with a specified time.

57-58 Qwest supports the Commission's tentative conclusions with respect to inspection for space exhaustion and the issuance of reports on available collocation space. The reports should identify areas that the ILEC is reserving for future use, and should provide a timetable for when the ILEC intends to use any reserved space. The Commission should require ILECs to remove obsolete equipment if necessary to permit competing carriers to physically collocate.

58 Qwest also supports the other collocation aspects of the ALTS document, such as "cageless" collocation, subleasing of physical collocation space, cage to cage connectivity, more economical collocation pricing, and speedier determination of space availability.

58 Qwest supports the adoption of national rules that make clear that competing carriers continue to have the right to employ, under the network element provisions of the Act, every facility, equipment, functionality and capability of the ILEC network as it evolves.

60 Qwest urges the Commission to require that the ILEC provide access to information about dark fiber capacity (including the generation of the fiber) and access to any network test capability.

61 Spectrum management issues can also be addressed in large part by employing newer technologies in the network. This is an additional reason why the Commission should include in its rules requirements that the ILEC continue to upgrade its network facilities to support the widespread provision of advanced services.

61 A "riparian rights" approach, under which new users could not cause interference to existing technology, may make sense, but only if the Commission bounds those grandfather rights within appropriate time frames.

62 Qwest supports the Commission's tentative conclusion that there should be uniform national standards for the attachment of electronic equipment at the central office end of a loop by ILECs and new entrants. . . . The standards must be acceptable both to the ILEC community and the CLECs.

63 The Commission should require ILECs to continue to provide the full range of network functionalities to competing carriers, regardless of the bandwidth provided and regardless of technology used (whether circuit-switched or packet, copper or fiber, etc.) and regardless of whether or where electronics are deployed in the ILEC network. The ILEC must not be allowed to degrade its network, whether through transfer of equipment to an unregulated affiliate or through any other means.

64-65 The Commission should make it clear that Section 251(c)(3) of the Act gives competitors access to all of the loop, switching, and transport functionalities provided by ILECs, including the electronics used to provide those functionalities. Thus, the network elements available under section251(c)(3) should include (for example) HDSL-equipped T-1 or DS-1, FOTS equipped DS-3, Remote Terminal (however equipped) functions, DSLAM-equipped xDSL, fiber OC-N services, as well as dark fiber in the loop and interoffice network.

65 The local loop is the network element used by the ILEC to provide itself such a signal, and competitors should have access to the same local loop, including electronics and including all its functionalities. To suggest that a loop is merely the medium – i.e., the copper wire or optical fiber without electronics – is to provide competitors with only part of a loop – in effect the subloop element referred to in other contexts as "dark fiber."

66 The Commission also should order the ILECs to provide access to dark fiber to enable competitors to exercise the option to install their own electronics to create competing local exchange and exchange access services.

67 The ILECs do not want to offer dark fiber and OC-N rate capabilities because by doing this they will cannibalize their more profitable lower-bandwidth services. Historically, ILECs have had to be forced by CLEC competitors to offer higher bandwidth services to large businesses in urban centers, under the threat of losing major revenues.

68 The Commission must, at a minimum, ensure that any advanced services loop provided by the ILEC through DLC technology in remote terminals or customer premises locations is available to competitors as an unbundled element, including all electronics.

69 The plain language of Section 10 of the Act, 47 U.S.C. § 160, prohibits the Commission from forbearing from applying any provision of Sections 251 or 271 until those sections are "fully implemented." The FCC therefore lacks authority to forbear from one provision of Section 251, or from the application of that Section to a particular service or facility, until the entire Section is fully implemented.

70 Qwest also believes the Commission should consider rules that would *require* ILECs to deploy broadband in the local network – broadband that would be subject to the pro-competitive requirements of Section 251. Such mandates may be particularly appropriate for the RBOCs and other larger ILECs.

70 The nation's ILECs are simply not responding to demands for last mile broadband in anything approaching a reasonable speed.

72 In a nutshell, the typical ILEC's attitude will be: "I'll deploy local broadband when I'm good and ready. Until then I don't want anyone else doing so."

73 Build-out mandates are particularly appropriate for the RBOCs. Today the RBOCs are trying to hold the nation hostage.... The Commission should not cave in to these demands. Instead, it should recognize a market failure and act accordingly.

74 It certainly would be reasonable to require that the RBOCs upgrade their local networks sufficiently so that 20% of their lines have a minimum of 1.5 Mbps capability within two years and 40% within four years.

75 The Commission should also require ILECs to respond to requests for higher bandwidth facilities (e.g., OC-N, DS-3, and dark fiber) from CLECs, end users, and within reasonable time frames.

75 Commission also should order ILECs to provide CLECs with access to dark fiber, which would enable CLECs to deploy their own advanced capabilities, sometimes more quickly than the ILECs themselves can do.

76 Qwest agrees that in the future minimum broadband access may fall within the definition of interests that Section 254 is designed to protect.

76 Local broadband mandates would promote the goals of Section 706 and be fully consistent with Congressional intent.

77 Qwest recommends that the Commission immediately open a rulemaking proceeding to consider ILEC deployment *mandates* that can go forward side-by-side with the consideration of ILEC deployment *incentives* here.

41. RHYTHMS NETCONNECTIONS, INC.

4-7 ILECs should be required to provision loops for xDSL-based services and not avoid that obligation by raising bogus "technical compatibility" and interference issues. An industry committee, such as ANSI T1 Committee, or an FCC-chartered organization similar to the North American Numbering Council, could provide objective technical standards for spectrum management to resolve ILEC concerns. The ILECs should submit spectrum interference level reports on all interconnection with xDSL competitors, with a certain percentage randomly selected for audit by the FCC or a technical advisory committee. Alternatively, a system should be established to allow CLEC access to facilities to conduct their own testing of specific loop bundles.

7-9 Currently, ILEC digital loop carrier ("DLC") vaults on unconditioned loops interfere with transmission of xDSL-based advanced services. The FCC should take several regulatory steps to allow CLECs to transport advanced services on loops with DLC vaults. First, ILECs should be required to identify all DLC vaults where collocation space is available. Where an ILEC alleges space exhaustion, it should be required to submit floor plans and space diagrams to the appropriate state commission, and inspection of the site by the requesting CLEC. Second, ILECs must be prohibited from providing collocation space at a DLC vault to its advanced services affiliate unless space has also been made available to competitors. Incumbents must be prohibited from "warehousing" space for future use, particularly by their affiliates.

Third, like shared cages in central offices, the FCC should require ILECs to allow shared equipment racks in their DLC vaults. Rack sharing will expand the number of competitors that a given vault will be able to sustain and lower collocation costs.

10-11 Interface standards are necessary so that CLEC line cards manufactured by various equipment manufacturers will fit into ILEC equipment racks. In a shared equipment rack, security and performance issues, and verification procedures also would have to be established for both shared remote and physical access to DLC vaults by ILECs and collocators.

11-12 The FCC should provide competitors with detailed information regarding alternative copper loop availability and quality.

12-13 While it agrees that ILECs should be required to provide sub-loop unbundling, Rhythm believes its proposal goes further in requiring mandatory CLEC access to the DLC vault is more accurately described as collocation necessary to *complete* the unbundled loop from the customer premises to the central office that has been interrupted by the ILEC's DLC vault.

13-19 The advanced service affiliate approach for ILEC participation will promote advanced services only if the ILEC's advanced service affiliate is so truly separate that it is, in effect, another CLEC.

19-21 The ILEC advanced services affiliate must operate on an independent, arm's length basis from the ILEC. The ILEC should make available to competitors the details of the nature of equipment that its advanced service affiliate receives, such as physical make-up of loops, and whether the loops have been cleansed of load coils and bridge loops.

21-22 There should not be a *de minimis* exception to the prohibition on transfer of assets or services from the ILEC to its advanced services affiliate.

23-26 Even with separation requirements, additional enforcement measures are necessary to prevent the ILEC from discriminating in favor of its advanced services affiliate. The FCC should adopt national collocation rules requiring physical collocation, as essential to local competition.

27 The FCC also should require availability of alternative collocation arrangements, such as shared collocation cages, no minimum cage size or cageless collocation.

28-30 The FCC should mandate that each CLEC need pay only its share of any collocation charge, and require that incumbents must contract all up-front space preparation work at arm's length with independent third-party contractors, agreed to by the CLEC requesting the build-out. Rhythm endorses ALTS proposal that the FCC establish presumptive reasonable deployment intervals for new collocation arrangements and expansion of existing arrangements. The FCC should adopt its proposal to set specific maximum intervals for the ILEC to provide information on collocation availability and prices and to in fact provision collocation space. Competitors regularly waste large amounts of time requesting collocation space at central offices, only to find out subsequently that space required is not available at the central office. ILECs should provide competitors with lists of space availability at each central office so that CLECs don't have to waste time with guessing games in seeking collocation.

30-31 Accurate identification of space exhaustion is the single most important collocation issue currently faced by competitors. The FCC should adopt its proposal that ILECs claiming space exhaustion be required to provide state commissions with detailed floor plans and allow the requesting CLEC to tour the premises. ILECs also should be barred from warehousing central office space for use by its affiliates or for non-essential functions, such as accounting, marketing, etc. The following additional collocation options should be made available by the ILEC: "Adjacent On-Site" whereby the ILEC constructs a structure on the property of the central office and allows CLECs to place their equipment on it and run facilities into the central office to the MDF; and "Adjacent Off-Site" whereby the ILEC or CLEC constructs or rents space in close proximity to the central office, but off the property and the competitor then obtains copper facilities effectively extending the unbundled loops from the central offices of the CLEC's off-site location.

32-33 The FCC should order ILECs to provision clean copper loops, free of load coils and with a minimized number of bridge taps. ILECs also should be required to provide information to a competitor upon request, in a prompt, clear and transparent manner, regarding the actual condition of any and all loops so that the competitor can determine whether and which loops meet its requirements for providing advanced services.

42. SBC COMMUNICATIONS INC.

2 As currently proposed, the "272-like" structure for an advanced services affiliate would appear to have many inefficiencies, restrictions, and unknowns to provide an expected return commensurate with the risks of deploying the significant investment associated with advanced services.

3 Best way to achieve the promise of Section 706 is to permit each ILEC to reap the benefits of its own efforts, investments, and efficiencies through appropriate regulatory relief for the ILEC itself.

4 A structurally integrated approach with appropriate regulatory relief would do the most to encourage ILECs to deploy advanced capability.

5 Not inalterably opposed to a separate affiliate structure, and will give serious consideration to any final rule that the Commission may eventually adopt.

6 FCC proposal introduces several significant inefficiencies and also raises state regulatory issues that may not be capable of being resolved in the near-term.

6-12 Areas that should be addressed in final Commission rules:

- ILEC and its affiliated data carrier must be able to engage in joint marketing, defined to encompass the spectrum of marketing and customer activities);

- Asset transfers should be permitted from the ILEC to the data affiliate; SBC supports establishing "safe harbor" rule for asset transfers.

- Commission should conclude that any transfer of employees from the ILEC to the affiliate would not make a data affiliate a "successor or assign" of an ILEC for forbear from 251(h).

- ILEC and its affiliated data carrier should be able to jointly own switches and other facilities.

- There must be relief to permit packet-switched traffic to be carried across LATA boundaries to connect to a network access point (NAP).

- Data affiliate should not be limited to data services, but should be fully able to provide any interstate services it wishes on a nondominant basis.

- Data affiliate should not be accorded treatment less than that given any other requesting carrier, given the same priority, and be able to deal with the ILEC as any other carrier is able to. In this regard, SBC suggests that the Commission picked the wrong structural separation model—instead of Section 272, FCC should look to Section 22.903 of its rules.

- Commission must make clear that the organizational location of a data affiliate does not affect its treatment, e.g., SBC might want to make the data affiliate a subsidiary of a 272 affiliate.

12 Potential for inconsistent state treatment of the data affiliate raises significant concerns. If the data affiliate is treated like an ILEC under State law or is subject to analogous State unbundling and resale obligations, then SBC will have inserted artificial inefficiencies and costs into its business without a corresponding return or other benefit.

12 Commission must work closely with State commissions in order to ensure that the proposed data affiliates are treated like any other CLECs for intrastate purposes.

13 Before imposing new obligations on ILECs, the Commission should rule on the remaining 96-98 petitions for reconsideration and clarification.

14 Commission should not lightly disturb State decisions concerning measures to promote competition in the local market. FCC should not engage in rulemaking where further negotiations, or an arbitration or a complaint would be more appropriate.

15 Collocation obligations only extends to "equipment necessary for interconnection or access to unbundled network elements." An ILEC may lawfully refuse to allow other equipment, e.g., information or enhanced services equipment, to be placed on its premises.

16 SBC has been willing to permit remote switching modules (RSMs) to be collocated even though not required under the 1996 Act and does not constitute collocation.

16 Commission should not include switches or other switching equipment in the category of equipment that must be collocated.

17 Commission must remain cognizant of the operational and administrative effects of expanding to include switches and switching equipment. Switches can consume a large amount of space. Requiring ILECs to provide space for switching equipment will only accelerate the exhaustion of available space.

17 Requiring switches and switching equipment to be permitted in physical collocation arrangements also equally expands an ILEC's virtual collocation obligation. Switches and switching equipment are much more complicated to operate. It would be unreasonable to require virtual collocation of as many different switches as various requesting carriers may decide.

18 Wholeheartedly supports tentative conclusion that ILECs may require a carrier's equipment to comply with safety requirements and standards. Commission should not, however, establish NEBs or a similar standard as the standard ILECs and CLECs must follow.

19 With respect to the proposal to address potential situations where an ILEC may use non-NEBS-compliant equipment, the Commission should be careful not to adopt an inflexible rule that does not recognize differences between premises and/or the safety precautions that may be used.

19 FCC should not adopt a requirement that an ILEC "list all approved equipment and all equipment they use." Costs would be significant. Also, list wold disclose information that SBC considers proprietary.

20 Instead, FCC should encourage negotiations on nonstandard equipment in the context of disclosure by the ILEC of its nonstandard compliant equipment in specific premises in response to a CLEC's collocation application.

20-27 Different form of collocation are better left open for negotiation, rather than

Commission rule.

- SWBT has been willing to provide "common area" collocation, subject to cost recovery assurances (e.g., what if the requesting first-in CLEC is the only CLEC that uses the space) and adequate liability limitation and indemnity provisions. As an alternative, the CLECs could share a single cage by having one CLEC obtain the space and then "sublease" the space.

- SBC LECs are willing to accommodate requests for physical collocation space of less than 100 sq. ft. Commission should recognize that there may be tradeoffs associated with a space of less than 100 sq. ft., e.g., many of the nonrecurring costs associated with physical collocation may not vary with smaller spaces, e.g., cable racking, conduit, space preparation.

- SBC believes "cageless" collocation raises an unacceptably high risk of harm to an ILEC's network and services, as well as raises proprietary concerns. SBC is unaware of any adequate substitute for the use of cages and secured pathways. Cannot comment on claim that US WEST is offering "cageless" collocation.

- Most viable, cost-effective arrangement to eliminate the cage would be to provide all CLECs, where space was available, a secured separate room or floor dedicated to the CLECs.

- Another way of maintaining security without compromising the integrity and reliability of the network is to offer virtual collocation. This way, SBC will continue to maintain the equipment and the CLEC would not normally have direct access to the offices.

28 Commission does not have the requisite authority to dictate pricing structures for collocation [cites to the Eighth Circuit's decision]. Commission should reject calls to ignore the holding of *Iowa Utilities Board*.

29 Reasonable intervals for collocation have resulted from negotiations and arbitrations. There is no reason to upset those rules with a uniform, nationwide inflexible standard.

29 Opposes the proposal to permit collocators to tour SBC LEC premises after a claim is made that space is exhausted. Opposition is grounded on maintaining network security and potential intellectual property/proprietary concerns including CPNI (e.g., special government circuits; LEC arrangements with other customers, CLECs, and ISCs; special equipment configurations). SBC has agreed to permit collocators the option of a premise inspection by a third-party engineer. FCC should not upset this.

30 Commission should not adopt national standards for loops. What are needed are design rules and standards for the equipment placed on loops. At a minimum, equipment should only be allowed to be placed on a loop after an adequate amount of testing has been performed to show that the equipment can be deployed without

causing undue interference to existing services.

30-32 Commission's proposals for access to loop information are unrealistic and impractical. Proposal is based on belief that such records exist and are entirely in electronic format—that is not the case. Instead of providing a CLEC direct access to an ILECs loop inventory, the more feasible approach would be for the CLEC to provide to the ILEC the parameters of the technology the CLEC intends to use on the loop. The ILEC would then be able to do research/

32-34 Loop spectrum management is more critical each day, and needs a standards-driven approach to ensure service compatibility and quality. Industry standards should be examined as a basis for technology utilization. Once national standards for spectrum compatibility of xDSL technologies are established, a testing and certification process could be established to identify equipment that is in compliance with the standards.

35 On the issue of whether current uses should be grandfathered, proper spectrum management includes proactively determining what technologies are already in existence in a given portion of the network and managing the introduction of new services, by technology, so that interference is not introduced so as to cause degradation of existing services.

- Believes that existing services should have priority if they operate with the applicable PSD mask requirements, and that new services should be allowed only when they will not degrade an existing service to an unacceptable level.

- Believes that rearrangement of existing services to permit the introduction of a new service is unacceptable

36-41 The concept of spectrum unbundling would be contrary to earlier FCC decisions and would not be 'technically feasible" as defined by the FCC. Also, spectrum unbundling raises a host of customer issues, operational issues, potential network problems, administrative difficulties, the need to create and upgrade OSSs, and cost recovery issues. Opposes mandatory spectrum unbundling. [Lists several questions/problems that would be encountered when trying to provision, install, maintain, troubleshoot, and manage spectrum unbundling; also lists items that need to be addressed from an OSS perspective.]

- But, the Commission should not prohibit spectrum unbundling by any carrier so long as the ILEC does not object and no network harm results.

42 Supports conclusion that "there should be uniform national standards for attachment of electronic equipment . . . at the central office end of a loop by incumbent LECs and new entrants."

43 Commission should take care in attempting to lump different technologies in addressing loop capabilities and functions. Assuming that lop conditioning must be

performed, Commission should be careful not to place too much emphasis on the use of the term "xDSL" as a generic technology reference. Combining different technologies onto loops in the same cables and binder groups would be detrimental to the ongoing integrity of the network unless rigid specifications are adopted and adhered to.

44 Beyond technical feasibility issues, unbundled loops passing through remote terminals will raise other limitations. Space and power would be considerations at many locations. E.g., available space n a remote terminal will be limited, and the placement of a single DSLAM with its associated cross-connect and power equipment might exhaust that space. Remote terminal space should be made available on a first-come-first-served basis.

45 Strongly opposes the tentative conclusion that deployment intervals for provisioning xDSL-compatible loops should be the same for ILECs and CLECs, regardless of whether the loop passes through a remote concentration device.

46 Subloop unbundling should not be required.

43. TANDY CORPORATION

4 Commission's proposal to exempt from the resale mandate advanced services that are primarily marketed to telecommunications carriers is not permitted by the plain language of the statute.

4 Separate affiliate proposal would allow the ILEC to circumvent the requirements of Section 2651(c) by establishing a separate affiliate for the provision of advanced services.

6 If Commission permits ILEC to circumvent Section 251(c) through a separate affiliate, the Commission (1) should adopt all 7 of its proposed separate affiliate structural separation and nondiscrimination requirements; (2) should not adopt lesser separation standards for smaller ILECs; and (3) should not adopt a de minimis exception for transfers of ILEC network elements.

7 Commission must prohibit transfer of ILEC brand name identity to separate affiliates.

7 Commission should not allow ILECs to shift their established customer base to their separate affiliates.

44. TELECOM CONSULTING ASSOCIATES, INC. ("TCA")

4-6 Several modifications to the advanced services affiliate proposal are necessary if it is to provide a compelling incentive for TCA's constituency, rural LECs, to provide advanced services in their low population density and high cost markets. Rural LECs should be allowed to share resources, including personnel and other assets, other than switching or transmission facilities, with their non-regulated advanced services affiliate. Unlike larger LECs, rural carriers cannot recover the cost from their limited customer base of paying separate personnel dedicated exclusively to providing advanced services through an affiliate.

7-8 If the FCC does not adopt relaxed separate affiliate regulation for rural LECs, then the FCC should allow rural LECs to provide advanced services on an integrated basis. The FCC should consider providing a blanket exemption from Section 251(c) requirements for rural LECs offering advanced services. Any universal support payment made available to rural LEC advanced services should be made available to all advanced service providers.

45. TIME WARNER TELECOM

4-6 The FCC lacks the authority to exempt an ILEC's advanced services affiliate from the ILEC resale and interconnection obligations of Section 251(c), where the affiliate remains a *de facto* "successor or assign" of the ILEC within the meaning of Section 251(c). A continuity of identity or sustenance of like character from a parent organization to an affiliate is enough to qualify as legal successorship. As defined by the FCC, an advanced services affiliate could jointly market with and sell advanced services under its ILEC parent's brand name and thus possesses a continuity of identity with the ILEC parent to legally qualify as a "successor" of the ILEC.

6-9 An ILEC will have the incentive and opportunity to discriminate in favor of its advanced services affiliate. Whether regulated or unregulated, an advanced services entity affiliated with an ILEC will gain unfair competitive advantages simply by reason of its affiliation with the ILEC. Despite the "arm's length" appearance of transactions between an ILEC and its affiliate under the FCC's rules, an ILEC would be free to disadvantage non-affiliated advanced service providers in subtle ways by sharing critical information only with its advanced services affiliates, through contracts it enters with its affiliate and its affiliate's competitors, by sharing services with its advanced services affiliate, or by intermixing parent company and advanced services affiliate employees.

9-10 In view of the dynamic and "highly fluid" nature of the advanced services market, ILECs will have even greater opportunity to game the non-structural safeguard rules through its advanced services affiliate. The Section 272 non-structural safeguard rules derive from the FCC's post-divestiture equal access rules. Then, BOCs theoretically lacked the incentive to evade the equal access rules because they were, in any event, prohibited from entering competitive long distance markets by the MFJ line-of-business restriction. Similarly, the Section 272 safeguards were intended to apply to BOC interLATA offerings, with the exception of certain "incidental" offerings, only after the BOC had already received interLATA entry authority by meeting the Section 271 competitive checklist and opening its local monopoly network to competition. In contrast, there will be no line-of-business restriction or prerequisite that the BOC open up its underlying monopoly network before it is allowed to provide advanced services through an affiliate under the FCC's proposal.

11-12 The potential for anticompetitive harm is even greater if the ILEC's advanced services affiliate is not regulated. For example, in a geographic market where the only existing advanced service provider is an ILEC affiliate, the only means of competitive entry is through resale of the ILEC affiliate's advanced services. However, as a non-regulated entity, the ILEC advanced service affiliate would be exempt from the Section 251(c) resale obligations, and would be free to restrict resale of its advanced services by competitors.

12-14 ILECs have the incentive and opportunity to cross-subsidize the costs of advanced service affiliate offerings. The FCC's price cap and joint cost-accounting rules will not deter an ILEC from shifting costs for its affiliated advanced services onto its regulated ratebase. This would not be the case if the advanced services also were regulated.

14-15 The FCC should prohibit any transfer of equipment from an ILEC parent to an advanced services affiliate. A *de minimis* exception for transfers of certain types of equipment is ripe for abuse. Due to the rapidly evolving nature of advanced services, it would be a regulatory nightmare to try to monitor what ILEC services are necessary to provide advanced services and therefore subject to unbundled network element requirements, or to distinguish UNE advanced service equipment from *de minimis* equipment transfers.

16-20 Recent, substantial investment by ILECs in advanced services technology belies their claim -- upon which the FCC's advanced service affiliate proposal is based -- that Section 251(c) resale and interconnection obligations are thwarting ILEC incentives to invest in advanced services. (citing press stories of multi-million dollar advanced service rollouts by Bell Atlantic, Ameritech, U S West, SBC, BellSouth and GTE). Given this ongoing ILEC investment, the FCC's proposal to allow ILEC affiliates to offer advanced services on a virtually unregulated basis will serve no purpose other than to allow ILECs to suppress potential competing advanced service offerings.

21-27 The FCC must remove entry barriers created by its current collocation rules. The FCC should ensure that all interstate rates for virtual and physical collocation are based on forward-looking cost. ILECs should be required to allow CLECs to purchase equipment used in virtual collocation arrangements for $1 or a similar nominal sum so that the superior physical collocation arrangements can be established in place of current virtual collocation arrangements. Since space limitations may continue to make virtual collocation necessary in certain situations, the FCC should also work to reduce the cost of virtual collocation arrangements. To improve ILEC provisioning of collocation arrangements, the FCC should adopt performance measures, benchmarks and penalties for failure to meet the benchmarks, along the lines of Local Competition Users Group Version 7.0 of its Service Quality Measurements (attached as

Attachment B). The FCC also should adopt its tentative conclusion that ILECs allow collocators to share collocation cages, use collocation cages of any size without a minimum requirement and use "cageless" collocation.

46. TRANSWIRE COMMUNICATIONS, INC.

7-11 The FCC should permit ILECs to offer advanced services, if at all, only through a truly separate affiliate. The current market is rife with examples of ILEC anticompetitive practices including refusing to provide DSL-compatible loops on a reasonable and timely basis, and hogging up collocation space. Even so, separate affiliate regulation of ILEC advanced services is, at best, an imperfect model.

11-15 An ILEC should be required to resell at wholesale rates any advanced services or components that it makes available to its affiliate. Resale is an important method of promoting advanced services competition.

16-22 The potential for an ILEC to discriminate in favor of its advanced services affiliate requires heightened regulatory scrutiny, including prohibitions on virtual collocation by the ILEC affiliate; separate financing of ILEC and affiliate operations; exempting smaller or rural LECs from heightened regulatory requirements; and a flat prohibition on transfer of any equipment from the ILEC to its affiliate. If the FCC allows *de minimis* transfers, they should be backed up by detailed ILEC documentation, thoroughly audited, and subject to network disclosure requirements.

22-32 The FCC should adopt the following collocation standards to promote advanced services competition: (i) NTIA's proposal that any collocation arrangement approved by a state commission be subject to a universal rebuttable presumption of "technical feasibility"; (ii) specific and detailed national collocation standards, including cageless collocation, cage sharing, cross connection to cages of other collocated carriers, and elimination of equipment limitations; (iii) removal of restrictions on the type of equipment that may be collocated, including equipment with switching functionality; and (iv) rules that facilitate CLEC access to collocation space, such as nationalized security procedures, and expedited dispute resolution procedures to resolve ILEC denials of CLEC collocation based on an alleged lack of space.

32-40 The FCC should adopt local loop requirements that facilitate competitive advanced services deployment, including: (i) national standards to ensure access to local loops at any technically feasible point and to preserve existing copper infrastructure; (ii) requiring nondiscriminatory access to OSS systems for loop ordering and provisioning; (iii) national spectrum management standards to resolve potential interference of differing technologies; (iv) uniform national standards on attachment of electronic equipment at the central office end of the loop; (v) requiring any type of loop, conditioned or raw, that will provide the lowest cost alternative for transport of the requesting carrier's particular advanced services technology, subject only to interference constraints; (vi) a rebuttable presumption that sub-loop unbundling and collocation at remote terminals is technically feasible, with the burden on the ILEC to demonstrate that lack of space renders sub-loop unbundling or remote terminal collocation technically infeasible.

40-41 Resale obligations should attach to all advanced services marketed by ILECs to residential or business customers or to ISPs, regardless of whether such services are classified as telephone exchange or exchange access service.

42-48 The FCC should preserve existing LATA boundaries. LATA modification is not necessary to allow ILECs to provide advanced services to schools and libraries across LATA boundaries because the statute already exempts BOCs from the interLATA prohibition with regard to schools and libraries. Existing LATA waiver cases are distinguishable because they are limited to modifications necessary solely to accommodate changes in state local calling areas or to improve local exchange service. In contrast, modifying LATA boundaries as requested by the ILECs is designed for the sole purpose of removing interLATA restrictions, not driven by some exogenous regulatory change in local service area definitions or overlapping service area boundaries. In any case, changing LATA boundaries to allow BOCs to devote their interLATA capacity to advanced services is not necessary to heighten Internet efficiency, where performance problems in Internet routing and network access points today can best be addressed through specific engineering strategies.

47. UNITED STATES TELEPHONE ASSOCIATION ("USTA")

3-4 The FCC should exercise its ample authority to eliminate unnecessary regulation of ILECs pursuant to the advanced services provisions of Sections 706, its regulatory forbearance authority under Section 10, or its biennial review of regulation under Section 11 of the Federal Telecommunications Act. Elimination of burdensome, costly and unnecessary ILEC regulation will establish regulatory parity where such regulation now places ILECs at a competitive disadvantage to competitors like MCI/WorldCom's "UUNET", QWEST, Level 3, and cable providers of high-speed data and Internet services such as Time Warner's "RoadRunner" and TCI's "@Home" Internet access services.

4-5 Requiring ILECs to establish separate advanced services subsidiaries is burdensome and costly and will place ILECs at a competitive disadvantage to cable operators and other competitors who will be allowed to offer advanced services directly. By removing artificial barriers to competition such as the separate subsidiary requirements for ILECs, the FCC will provide incentives for ILECs to rapidly deploy innovative, advanced telecommunications networks and services.

5 If the proposed collocation requirements are adopted, the FCC may improperly preempt existing state approved collocation agreements, and create another layer of burdensome and costly regulation.

5-7 The Commission lacks the authority under Section 251(c)(3) unbundling requirements to order ILECs to provision conditioned loops upon request to competitors. As the Eighth Circuit stated, Section 251(c)(3) unbundling does not require that the ILEC cater to every request that a competitor makes, and nondiscriminatory unbundling does not mean that an ILEC must provide conditioned loops that it does not provide to itself or its own affiliates.

7-11 Imposing resale obligations on ILEC-provided advanced services is contrary to existing FCC policy. The FCC has found that, under Section 251(c)(4), ILECs are not required to resell exchange access services since these services are offered primarily to interexchange carriers, at carriers' carrier rates, rather than on a retail basis to end users. The FCC has failed to explain why exchange access must now be subject to Section 251(c)(4) resale obligations when made available through ILEC deployed advanced telecommunications networks and service offerings. In its Universal Service Report to Congress, the FCC also has found that ISPs do not offer "telecommunications service" when they furnish Internet access to their customers. Treating ILEC-provided xDSL services as telecommunications services subject to a resale obligation is contrary to the FCC's Universal Service Report finding.

12-13. The FCC should remove LATA boundary restrictions. In today's packet-switched data and Internet world, the fifteen-year old LATA boundary restrictions are useless. Neither the customer nor the phone company may know what path information packets may take in arriving at their final destination.

48. U S WEST

2 Conditioning regulatory relief on structural separation is doomed to fail: Denying incumbents the benefits of integrative efficiencies would remove both their ability and incentive to fulfill their potential to bring advanced services to the mass market.

3 Regardless of any Commission action in this proceeding, the top echelons of the advanced services market – areas with large urban populations and big business – will be fiercely competitive. The lure of substantial profits makes that a certainty. The challenge confronting the Commission is to find a way to bring competition to the rest of the consumer market. Forcing incumbents to behave like new entrants, far from helping achieve that goal, would preserve the status qua of selective deployment of advanced services.

4-5 The Commission should not impose any unbundling requirements beyond those already in place. Under the Act and the Commission's interpretations, unbundling is appropriate only for critical bottleneck elements. Advanced electronics such as DSLAMs, ATM switches, and other packet-switching equipment are not bottleneck elements because they are readily available to all carriers on the open market.

5 U S WEST believes that it does not function as an incumbent LEC in providing advanced services because such services are neither telephone exchange nor exchange

access services. If one of those two characterizations must be applied, however, the fact that Internet service providers ("ISPs") represent virtually the entire subscriber base of U S WEST's MegaCentral service indicates that such advanced services are access services that are far more comparable to "exchange access" than "telephone exchange" services.

6 Congress specifically provided two critical factors that the Commission "shall consider, at a minimum" [in determining whether a network element must be unbundled]: whether the failure to provide access to particular network elements would "impair" the ability of requesting carriers to provide service, and, in the case of proprietary elements, whether unbundled access to the elements in question is "necessary." Accordingly, whether a competitor is entitled to an incumbent's facilities depends on whether the competitor can reasonably obtain a substitute facility elsewhere or build the facility itself.

7 The Commission's existing regulations under the *Local Competition Order* already require that incumbent LECs unbundle any bottleneck services and facilities that are not readily available from sources other than the incumbent LEC. Any other facilities competitors need to provide their own advanced services are freely and competitively available; incumbent LECs have no bottleneck control over such items.

8 Because U S WEST's competitors can obtain needed facilities or technological substitutes from other sources – including network providers in other industry segments using different technologies – they do not need unbundled access to U S WEST's advanced services facilities.

9 The Commission cannot require incumbent LECs to unbundled advanced services without running afoul of its duty under section 706 of the Act "to ensure that the marketplace is conducive to investment, innovation, and meeting the needs of consumers." This duty should play a key role in determining the scope of incumbent LECs' unbundling obligations in the context of advanced services.

10 Requiring an incumbent LEC to share an innovation or investment with a competitor necessarily diminishes and often eliminates the investment incentives of both the LEC and its prospective competitors.

11 The effect of destroying incumbent LECs' incentives to invest in advanced data facilities would be most pronounced in the smaller and more rural communities that have been least able to obtain affordable access to advanced services – the same communities whose interests lie at the heart of section 706.

13 If advances services must be characterized either as "telephone exchange" or "exchanges access" services, the MegaCentral services U S WEST provides to ISPs fall within the latter category. U S WEST plainly sells access to ISPs, albeit not to the circuit exchange. The Commission's rules define "access service"

14 Although the Commission has tentatively suggested other, the reasoning that led it to exclude exchange access from the section 251(c)(4) resale obligation is directly applicable here. The Commission has noted that ISPs are note "carriers," but regardless of whether an incumbent LEC sells an IXC access to telephone exchange services or sells an ISP access to advanced services, it is furnishing a "fundamentally non-retail service" to which Congress never intended 251(c)(4) to apply. In both cases, the incumbent LEC's service is simple a component of a larger service offered to retail customers. Thus, because Congress expressly limited application of 251(c)(4) to "retail" services, it is irrelevant whether ISPs are carriers. They are indisputably wholesale buyers of access rather than retail end users, and that fact alone exempts the provision of DSL services to ISPs from the resale requirement.

14-15 Finally, state commissions rather than the Commission have the ultimate responsibility to determine whether DSL service should be offered to competitors at a discount. And as a recent resolution by the California PUC demonstrates, states are beginning to recognize that advanced services are not appropriate for resale. The California PUC recognized that, "as a new technology that would enhance consumers' need for high speed digital connectivity, ADSL services should be made available to consumers without delay." But in accordance with the principle that the Commission's analysis in the *Local Competition Order*, the PUC concluded that "ADSL is a form of special access ... [and,] while special access/private line services are available for resale, they are not subject to wholesale discount."

15 The proposal in the Advanced Services NPRM to grant regulatory relief only to incumbent LECs that create separate data affiliates represents a cure that is worse than the disease. Structural separation would be more destructive than the unbundling and resale rules that mechanism is intended to alleviate.

16 Incumbent LECs are uniquely well positioned among common carriers to bring advanced services to the mass market, because their networks reach into virtually all communities – big and small, urban and rural.

17 U S WEST alone serves five of the ten states requiring the greatest monthly per loop universal service support payments; not surprisingly, those states are among those experiencing the most pronounced bandwidth shortage.

17 Structural separation would eliminate all integrative efficiencies. The NPRM's separation proposal would saddle incumbent LECs' data affiliates with the same economic disincentives to serve less well-off communities that new entrants now face. The playing field would indeed be level: Neither incumbents nor new entrants would be able to justify the economic cost of deploying advanced services to small and rural communities. The new affiliate would be unable to rely on U S WEST's existing ubiquitous network and accordingly, like other CLECs, would be able to serve only lucrative, high-density markets. Thus, the NPRM's separation proposal would fail to tap the potential of U S WEST and other incumbent LECs to deploy advanced services to the mass market.

18 In a closely analogous context, the Commission recognized that "[e]liminating all structural separation requirements and allowing the BOCs to provide enhances services pursuant to nonstructural safeguards will permit the BOCs to provided enhanced services to nonstructural safeguards will permit the BOCs to realize fully their vast potential to provide enhanced services to the public, especially the consumer market."

20 Experience also demonstrates that erasing regulations governing an incumbent LEC's integrated provision of advanced services results in a more competitive marketplace. A study of the enhanced services market found that it became more robust and competitive following BOC entry.

21 Structural safeguards are not necessary to protect competition or competitors. Nonstructural safeguards have proved appropriate in similar contexts to prevent misallocation of costs or discrimination, the concerns driving the structural separation proposal.

22-23 [T]he structural separation proposal ignores the fact that Congress has already created a comprehensive enforcement mechanism – the section 252 arbitration and appeal process – to address the very problem that the Commission is attempting to solve. Ensuring that an incumbent LEC gives its rivals nondiscriminatory access to the bottleneck elements and collocation necessary to provide competitive xDSL services is no different from enforcing section 251(c) in the context of voice services: An incumbent's incentives to unbundle a loop for a competitor are exactly the same whether the competitor plans to use the loop for voice or data.

24 Congress was familiar with separate affiliate requirements and imposed them in several limited contexts, but did not believe them necessary to enforce section 251(c) in the usual run of cases. It did not, for example, require incumbent LECs to provide ordinary voice services through separate retail affiliates. The Commission should not second-guess Congress's choices by extending structural separation to contexts in which Congress did not deem it necessary.

24-25 The Commission recognized that bringing enhanced services to the mass market was simply more important than insisting on an absolutely level playing field. Yet here, in its zeal to promote competition, the Commission appears to have lost sight of that goal.

25-26 If the Commission adheres to its tentative plan to condition regulatory relief on some form of structural separation, the Commission at most should require that a separate data affiliate comply with the requirements set forth in the *Competitive Carrier Fifth Report and Order*, as modified in the *LEC Classification Order*. [This Order outlined three requirements for a separate affiliate]: (1) maintain separate books of account, (2) not own transmission and switching facilities jointly with its affiliated exchange company, and (3) acquire any services it obtains from its affiliate exchange company tariffed rates, terms, and conditions.

27 n.33 Notably, even the *Fifth R&O* model is far inferior to permitting incumbent LECs to provide integrated voice and data services through their existing corporate structures without being subject to unbundling and resale obligations. A *Fifth R&O* data affiliate would be forced to purchase loops at tariffed rates in order to provide integrated services, just as CLECs must. Having to pay for loops would prevent incumbents from serving the mass market, just as it has deterred CLECs from deploying services in smaller and more rural communities.

28 Rather than looking to the enhanced services context of the CMRS context for guidance, the NPRM has modeled the separate affiliate proposal on the blueprint for a section 272 affiliate. That model is inapposite.

28 n.35 While section 272 should note be used as a model for any separate data affiliate, its three-year sunset provision, 47 U.S.C. § 252(f)(1), should be regarded as the outer limit for determining the length of time during which the separate affiliate requirement would apply.

29 [T]he Commission's proposal that the transfer of an incumbent's existing packet-switched facilities to its affiliate would make the affiliate an assign – and thus, for regulatory purposes, and incumbent LEC – would severely penalize any incumbent LEC that has made significant investments in advances facilities.

29-30 Even if the Commission were to permit the transfer of equipment and other assets, duplication of facilities still would be a foregone conclusion, absent further Commission action. Some states almost certainly would require U S WEST to continue providing – as an incumbent LEC – all data services that it has tariffed under state law. Accordingly, unless the Commission both allows asset transfers and establishes that state commissions may neither interfere with those transfers nor impose continuing service obligations on U S WEST, the separate affiliate proposal will be entirely unworkable.

30 If the Commission decides that advanced services facilities must be unbundled, making structural separation the only avenue to regulatory relief, it should nevertheless permit incumbent LECs to transfer nonbottleneck network elements and other nonessential assets to its data affiliate without causing that affiliate to become an assign.

31 The central inquiry under section 251(h) [definition of ILEC] thus should be whether a transfer of assets to an affiliate involves bottleneck facilities.

32 A data affiliate to which the incumbent LEC transferred only nonessential facilities would be independent from its parent, rather than a continuation of it, as evidenced by the fundamental difference in their core lines of business. Under general principles of successorship, such differences easily defeat any suggestion that a data affiliate is an

incumbent LEC's assign.

33 [E]ven under the NPRM's proposed successor/assign test, any assets other than network elements that an incumbent may wish to transfer – employees, customer accounts, or brand names – should be transferable without making the affiliate a successor or assign.

34 For the separate affiliate proposal to have any realistic chance of success, the Commission must preempt state law that would impede facilities transfers.

35 In particular, the Commission should preempt any state-imposed prohibitions against facilities transfers, and any state requirements that would burden or interfere with such transfers, whether directly or indirectly.

36 The proposal to adopt national minimum standards for collocation aims to fix a process that is not broken. Requesting carriers currently may obtain collocation space from U S WEST pursuant to clearly defined terms and conditions.

36 While U S WEST and other incumbent LECs may, in some instances, permit new entrants to collocate remote equipment that performs both switching and multiplexing functions, the 1996 Act does not permit the Commission to impose a requirement to collocate switching equipment. Congress has authorized the Commission to require only "physical collocation of equipment *necessary* for interconnection or access to unbundled network elements."

36-37 [T]he Commission's [takings] authority must not be stretched beyond what the statute clearly warrants, because to do so would take property that Congress has not authorized the FCC to take, and thereby risk exposing the federal government to actions for just compensation.

38 That a particular competitor might, for business reasons, prefer to move its switching equipment onto U S WEST's property is irrelevant, because wanting collocation space and needing it for interconnection are clearly distinct, and the Act imposes a duty on U S WEST only when the latter threshold is met.

40 As the Commission recognized, U S WEST already offers cageless collocation to new entrant. However, U S WEST believes that the Commission should not adopt a rule requiring cageless collocation, or any similar arrangement, because state commissions are in a far better position to determine what duties individual incumbent LECs should have in this context.

41 Security issues will vary on a case-by-case basis, however, making it impossible for the Commission to determine which procedures are most appropriate.

41-42 Nor should the Commission impose a national standard for upfront space preparation charges. To the contrary, space preparation is a prime example of why national standards are inappropriate. Costs vary significantly by state and by central office because of geographically divergent labor rates, among other things.

42 Similarly, any suggestion that the Commission should establish national presumptive reasonable deployment intervals for new collocation arrangements and expansion of existing arrangements is misguided. Provisioning is inherently site specific and cannot be made to conform to a uniform deployment interval.

42 There is no basis for requiring an incumbent LEC that denies a collocation request because of space limitations to provide a state commission with detailed floor plans and to permit a requesting carrier to tour its premises. States are capable of determining the legitimacy of claims of space exhaustion based on any detailed floor plans they require incumbents to provide; moreover, if any tour of an incumbent's premises is required, it should be conducted by a neutral party, to prevent security risks. All costs should be borne by the new entrant that requests a physical inspection.

43 National standards are poorly suited to managing loop-related issues. Technical feasibility issues vary with the equipment deployed in particular locations.

44 The Commission's tentative conclusion that incumbent LECs should provide requesting CLECs with "sufficient detailed information" about a loop to enable the CLEC to determine whether it is capable of supporting the xDSL equipment the CLEC intends to install makes sense if limited to what is commonly known as "loop qualification" information – information regarding loop length, loop coils, bridged taps, decibel loss, line carriers, and the like.

46 If the Commission does impose any new OSS requirements, it should allow sufficient time for incumbents to prepare appropriate OSS interfaces; and the Commission should make clear that incumbents of course cannot be expected to comply with already-expired deadlines that applied to existing OSS requirements. The Commission also should clarify in the unbundling context that incumbents need only provide loop qualification information for individual loops, rather than in aggregate form (by wire center, for example).

46 [O]verlapping DSL signals cause service problems such as crosstalk when deployed on cable pairs within the same cable binder group. By their nature, these problems cannot be resolved by one carrier alone; cooperation among providers of differing technologies will be essential. For this reason, through the T1E1.4 standards body, the industry has begun to establish spectrum management standards for both incumbents and new entrants to follow.

47 It would not be technically feasible for U S WEST to permit two different service providers to offer services over the same loop. U S WEST is able to provide voice and data services over a single conditioned loop because the voice and data signals are managed within a single circuit identifier and tracked in a single suite of

mechanized inventory and management systems.

47 There is no technology in place to install a "firewall" for a specified spectrum allocation within a loop.

48 Presently, no one served over a DLC-delivered loop can receive DSL service, whether provided by U S WEST or a competitor. U S WEST, along with the rest of the industry, is seeking a solution to this problem.

49 While technical feasibility issues might prevent subloop unbundling altogether, such unbundling in any event would be best accomplished on a site-specific basis, rather than through a rulemaking by the Commission.

49 n.48 Other [DLC] issues also would have to be addressed. Most importantly, collocation space presents an intractable problem in the context of DLC-delivered loops because the vast majority of DLC systems in U S WEST's network have been placed in equipment cabinets manufactured on a custom basis without any extra space for additional equipment.

50 The Commission should permit BOCs to provide interLATA data services to communities and customers who cannot economically obtain such services from existing providers.

52 The NPRM asks whether the existing exceptions to Section 271 for "incidental interLATA services" are sufficient to enable the BOCs to cure ... infrastructure shortages. The answer is clearly no. The traffic that these exceptions permit the BOCs to carry is simply too thin to justify building the needed facilities.

54 To encourage the rapid deployment of advanced telecommunications capability to unserved areas, the Commission should only require a BOC to (1) demonstrate that a given LATA lacks a DS-3 or faster POP at the time of applications, and (2) describe the Internet access points it would like to connect to and the facilities it plans to build. Contrary to the NPRM's suggestion, a LATA boundary modification, once granted should be permanent: Because the future expiration of a modification would strand the BOC's investment in interLATA facilities, a BOC would be unlikely to undertake the investment in the first place if there were a real risk of expiration – especially if the conditions that would trigger such an expiration (for example, the future construction of alternative transport facilities) were within its competitor' sole control.

49. UTC

2-7 Commission should limit use of the separate affiliate mechanism to states in which the ILEC is able to demonstrate to the FCC that ANY other entity in that state would be permitted to offer the same or similar services as the ILEC's advanced telecommunications affiliate. To the extent any other entity in the state would be prohibited or restricted in any manner from providing the same or similar services, the ILEC and its affiliate would be subject to the same prohibitions or regulations.

50. XDSL NETWORKS, INC.

2-4 Although both ILECs and competitors are in a sense on an even competitive footing to the extent that both are just beginning to introduce advanced services, the ILECs have a huge advantage over competitors because they exercise monopoly control over the copper loops and local network over which advanced services will be offered. FCC rules should ensure competitors nondiscriminatory access to ILEC networks to allow competitive delivery of advanced services.

4-6 ILEC conditioning of DLC loops on an unbundled network element ("UNE") basis to make them compatible with advanced services is key. ILECs should be required to condition local loops to allow competitors to transmit advanced services over existing analog loops and loops provisioned through remote concentration devices such as digital loop carriers ("DLCs"). A Yankee Group study shows that 25 percent of all local loops in the U.S. pass through DLCs.

6-9 ILECS must take the following steps to ensure that loops are properly conditioned loops: (i) remove existing equipment such as load coils and bridge taps that are incompatible with the provision of xDSL; (ii) if removal of xDSL-incompatible technology results in a copper loop in excess of 18,000 feet in length (which is the limit for full-bandwidth ADSL services), offer other alternatives, such as allowing placement of the competitors DSLAM within 18,000 feet of the desired location, or placement of the ILEC's own DSLAM in the required position for service to the customer; or (iii) if neither of the above alternatives is technically possible, upgrade the DLC loop to a "3rd generation" DLC that contains integrated DSLAMs that would support competitor transmission of xDSL services over existing loops. ILECS must unbundle sub-loop elements so that competitors can install their own multiplexers at the DLCs. Lack of space at the remote terminal is not an excuse for an ILEC to fail to provision a competitor with sufficiently conditioned xDSL-compatible loops, where the ILEC could replace older DLCs with xDSL- compatible 3rd generation DLCs without consuming increased space.

9-10 Competitors should be able to provide advanced data services over the same telephone line as the ILEC's voice traffic. ILECs should be able to accommodate xDSL data traffic and POTS voice traffic over a shared loop. Requiring a competitor to lease a separate loop from the ILEC which is dedicated to xDSL data traffic imposes an unfair and unnecessary expense on competitors.

10-12. The ILEC should be required to provide advanced services through a separate affiliate. The ILEC and its advanced services affiliate must not be able to jointly bill for voice traffic and advanced services. ILECs would have an unfair competitive advantage if they were allowed to use their powerful branding, marketing and customer information to directly market advanced services. The ILEC should not be allowed to engage in the transfer of any equipment – even a "*de minimis*" transfer – to an advanced service affiliate.

12-14 ILECs must be required to offer less costly forms of collocation, such as cageless collocation, shared collocation, and eliminate the minimum size requirements for collocation. Competitors must be allowed to collocate DSLAMs in the ILEC central offices to provide advanced services. ILECs should be prohibited from using collocation as a means of delaying competitor deployment of advanced services.